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Contradiction; then Zomemin

[Rava stated: Witnesses (*testifying to a capital offense*), who have been contradicted (*by another pair of witnesses*) and subsequently they were rendered *zomemin*, would be put to death, as the contradiction was a first step to the *hazamah*; though the proof of this was not yet complete at that time.

Rava proves this from the following *Baraisa*: If a set of witnesses say, “We testify that So-and-So has blinded the eye of his slave and he knocked out his tooth (*and therefore the slave should go free*), and the master himself also says like this,” and subsequently, these witnesses were rendered *zomemin*, they would be obligated to pay the value of the eye to the slave.

The *Gemora* asks: What are the circumstances of this case? If we assume, according to the apparent meaning of the *Baraisa* that there are no other witnesses here, why should they pay the value of the eye to the slave? After they have attempted to free him, they should be required to pay him the value of his eye!? Moreover, should they in such a case not be required to pay the owner for the full value of the slave (*as they falsely conspired to set him free*)!? And furthermore, what is the meaning when they said, “and the master himself also says like this”? Is it pleasing for the master to say such a thing (*and lose the services of his slave*)? Rather, it must be referring to the following case: A set of witnesses had already testified previously that the master knocked out the slave’s tooth and then blinded his eye, so that the master would have to pay him the value of his eye (*for by then, he was a free man*). [*The Baraisa begins here.*] A middle pair of witnesses testified later that he blinded his eye first and then his tooth, so that he would not have to give him anything but the value of his tooth. It emerges that

the first set of witnesses are contradicting the middle set, and it is to this that they (*the second set*) are saying, “and the master himself also says like this,” for the master was pleased with what they said (*for now, he is only liable to pay for the loss of the tooth*). The *Baraisa* continues: And if a third set of witnesses come and render the middle set to be *zomemin*, they would be required to pay the value of the eye to the slave (for they were scheming to deprive him of the (*larger*) payment for the eye. Does this not indicate that a contradiction in testimony is a first step to the *hazamah* (*for the second set was contradicted by the first set before the third set arrived and rendered them zomemin, and nevertheless, they are liable to pay*)!?)

Abaye rejects the proof: [*Witnesses who were contradicted by a second set of witnesses cannot become zomemin due to a third set of witnesses.*] The case here is when they switched around the events mentioned by the first set of witnesses (*the master knocked out the slave’s tooth and then blinded his eye, but at a different time than the first pair testified to*), and then they rendered the first pair to be *zomemin*. [*The second witnesses say that during the time the first witnesses said this happened, they were together somewhere else with them in a different place. It emerges, based upon the testimony of the second set of witnesses that the slave is set free, the master is obligated to pay for his eye and the first set of witnesses must pay the slave for the worth of his eye, for they attempted to deprive him of that by testifying that his eye was blinded first. Accordingly, there is no proof to Rava’s principle, for there were no witnesses that were contradicted before they became zomemin.*]

Abaye asks: From where do I know this? - If the second part of the *Baraisa* was referring to such a case, the first part was

also probably talking about such a case. The second part states: If a set of witnesses say, “We testify that So-and-So has knocked out the tooth of his slave and he blinded his eye (*and therefore the slave should go free*), and the slave himself also says like this,” and subsequently, these witnesses were rendered *zomemin*, they would be obligated to pay the value of the eye to the master.

The *Gemora* asks: What are the circumstances of this case? If we assume, according to the apparent meaning of the *Baraisa* that the second set of witnesses do not agree that the master injured his slave at all; they should pay the value of the entire slave to the master! [*They tried to make him lose the value of his slave, so the laws of zomemin would dictate they should pay him for the slave.*] Rather, it must be that they admit that the master injured him, but they reversed the order of events. They testified that the master first blinded his eye and then knocked out his tooth, and they rendered the first pair to be *zomemin*.

The *Gemora* asks: What are the circumstances of the case (*both cases of the Baraisa*)? If it was that the second set of witnesses said that the events happened later than when the first set of witnesses testified (*i.e. Monday instead of Sunday*), the first witnesses should be liable to pay for an entire slave!? This is because when they said he was liable, he actually was not yet liable (*to lose his slave*). The case must therefore be when the second witnesses testified that the events occurred before the first set of witnesses testified. And if the master had not yet been brought to court, they should still be required to pay the entire value of the slave to the master, for the master was not yet liable (*to free the slave*) at the time which they testified (*for the master could still admit to this and be exempt, for freeing the slave is a fine*). Rather, the case is where he had already been to a different *Beis Din*. [*They ruled that he must free the slave and pay for his eye. The master fled without complying with Beis Din’s ruling. The slave sued him in a different Beis Din and witnesses testified that Beis Din ruled that the master must free him and pay for his tooth. A second set of witnesses rendered the first pair zomemin and reversed the testimony.*

The first set will be obligated to pay to the slave the value of his eye.]

Rav Acha, the son of Rav Ika, asked Rav Ashi: What is Rava’s source for his deduction (*that contradiction is a first step to hazamah*)? It cannot be from the first part of the *Baraisa*, as the second witnesses were not fully contradicting the first witnesses in that case. If they (*the second witnesses*) would not have become *zomemin*, their testimony would have been upheld, and we would have ruled like them (*that the slave should be freed*) as included in two hundred is one hundred. [*The payment would merely be for a tooth, not an eye.*] Therefore, while it might be said that the first witnesses were contradicted (*for the master would not be liable to pay for his eye*), the second witnesses were not really contradicted (*for we would have ruled that the master must pay for his tooth*)!?

Rav Ashi answered: Being that the first part of the *Baraisa* is talking about three groups of witnesses, the second part must also be talking about three groups of witnesses. He therefore derives his law from the second part of the *Baraisa*. The case must be where a set of witnesses say, “We testify that So-and-So knocked out his slave’s tooth and then he blinded his eye.” *Beis Din* ruled as they said. Two others then came and said, “We testify that So-and-So has blinded the eye of his slave and then he knocked out his tooth.” This testimony contradicts the first one. The first pair were then found to be *zomemin*. They must pay the value of the eye to the master. If contradiction is not the first step to *hazamah*, why would they have to pay? They were contradicted first! It must be that contradiction is the first step to *hazamah*.

The *Gemora* notes: Abaye understand the *Baraisa* as follows: The first part of the *Baraisa* must be when there are three sets of witnesses, as the *Baraisa* states, “and the master himself also says like this.” [*This implies that the master prefers one type of testimony over another, meaning that there must be three sets of witnesses.*] However, why is it necessary to explain the second part of the *Baraisa* to be referring to three sets of witnesses? Is this because it says,

“and the slave himself also says like this”? The slave is happy with any testimony that sets him free! *[It is therefore no proof that there were three sets, and therefore, there is also no proof that contradiction is the first step to hazamah.]*

Rabbi Zeira asks: Why don't we say that if the master blinds him, he goes free; if he knocks out his tooth, he goes free; and if he does both, he also goes free? *[Perhaps the master never pays for an eye or tooth, even if he knocks out one and then the other?]*

Abaye said: Regarding your claim the Torah says, “*He shall free him in place of his eye,*” and we derive from there, “and not in place of both his eye and his tooth. “In place of his tooth,” and not in place of his tooth and his eye.

Rav Idi bar Avin says: There is a *Mishnah* supporting this teaching (*that contradiction is the first step to hazamah*). The *Mishnah* states: If according to two witnesses he stole (*an ox or a sheep*) and according to them he slaughtered or sold it and they were found to be *zomemin*, they pay everything. The case must be that they testified that he stole, then testified that he slaughtered it, and they then became *zomemin* on the stealing and then on the slaughtering. Once they became *zomemin* regarding the stealing, they are considered contradicted regarding the slaughtering as well, and even so they have to pay everything! If contradiction is not the first step to *hazamah*, why would they have to pay? It must be that contradiction is the first step to *hazamah*! - They said: *[This is not a proof.]* The case is where they first became *zomemin* about the slaughtering.

And this entire discussion is dependent on the argument between Rabbi Yochanan and Rabbi Elozar about witnesses who are first contradicted and then made into *zomemin*. One says that they are killed, and one says they are not killed.

The *Gemora* says: We can bring proof that Rabbi Elozar is the one who says that they do not get killed, for Rabbi Elozar said: Witnesses who are contradicted about whether or not

someone should be killed, receive lashes. If Rabbi Elozar would say that if they get contradicted and then become *zomemin* they get killed, why give them lashes when they are only contradicted? This seems to be a negative prohibition that is used to warn against possibly being killed, and such a prohibition does not warrant lashes! It must be that Rabbi Elozar is the one who says that they do not get killed. This indeed can be determined.

The *Gemora* asks: Lashes!? Why would witnesses contradicted in a capital case receive lashes? It is two against two? Why rely on the second set over the first set? Abaye answers: They receive lashes if the supposed murder victim shows up alive. (73b3 – 74b2)

Mishnah

If two said he stole, and only one said that he slaughtered or sold (*the ox or sheep*), or if he admitted to this, he only pays *kefel*, not the fourfold or fivefold payments. If he stole and slaughtered on *Shabbos*; he stole and slaughtered for idolatry; or he stole from his father who subsequently died, and he then slaughtered or sold it; or he stole an animal and then consecrated it and then slaughtered or sold it, he pays *kefel*, not the fourfold or fivefold payments. Rabbi Shimon says: If the thief stole a consecrated animal that the owner was obligated to replace, the thief must pay the fourfold or fivefold payments. If he did not have to replace it, he is exempt from paying. (74b2 – 74b3)

Witnesses After Admission to a Fine

The *Gemora* asks: It is obvious the testimony of one witness does not make him liable to pay! - They said: The *Mishnah* must be teaching that we compare his admission to the testimony of a witness. Just as if a single witness testifies and another witness later joins him, he must pay, so too, if he admits, and then two witnesses testify against him, he must pay. This is unlike the opinion of Rav Huna in the name of Rav, who says that when a person admits to owing a fine, and then witnesses testify to that effect, he is liable for the fine.

The text stated: Rav Huna said in the name of Rav: When a person admits to owing a fine, and then witnesses testify to that effect, he is liable for the fine.

Rav Chisda asked Rav Huna a question on his law from a *Baraisa*. The *Baraisa* states: Rabban Gamliel blinded an eye of his slave Tavi, and he was very happy (*that he was able to let him go free, for Tavi was a righteous slave and Rabban Gamliel wished to emancipate him; however, there is a prohibition against freeing a Canaanite slave*). He saw Rabbi Yehoshua and told him: Did you hear that my servant Tavi is going to be free? Rabbi Yehoshua asked him: Why is he going free? Rabban Gamliel replied: Because I blinded his eye. Rabbi Yehoshua said: What you are saying is incorrect, as you have no witnesses to this effect (*that you are the one who blinded him*).

This implies that if there would have been witnesses, he would have been liable (*even if they would have testified after he admitted*)! He said to him: Rabban Gamliel is different, as he did not admit before a *Beis Din*.

The *Gemora* asks: But Rabbi Yehoshua was the head of the *Beis Din*? The *Gemora* answers: He was outside of the *Beis Din* at the time.

The *Gemora* asks from a different *Baraisa*, which states that Rabbi Yehoshua said to Rabban Gamliel: What you are saying is incorrect, since you already admitted (*implying that he would not be liable even if witnesses would come later*)!? - It would seem that it is a matter of a Tannaic dispute if a person admits to owing a fine, and then witnesses testify to that effect, so that the Tanna who reported ‘as there are no witnesses for the slave’, would maintain that if one confessed to liability for a fine and subsequently witnesses appeared and testified [to the same effect], he should be liable, whereas the Tanna who reported ‘as you have already confessed’, would maintain that if one confessed to liability for a fine, though witnesses subsequently appeared [and corroborated the confession], he would be exempt? — No! They might both have agreed that if one confessed to the

liability of a fine, though witnesses subsequently appeared [and testified to the same effect], he would be exempt, and the point on which they differed might have been this: the Tanna, who reported ‘as there are no witnesses for the slave’, was of opinion that the confession took place outside *Beis Din*, whereas the Tanna, who reported ‘as you already confessed’, was of opinion that the confession was made at *Beis Din*. (74b3 – 75a1)

INSIGHTS TO THE DAF

Freeing a Slave

The *Gemora* says that when Rabban Gamliel blinded the eye of Tavi his slave, he was “very happy.” Rashi explains that he was happy because he really wanted to emancipate him, but was unable to do so since freeing a Canaanite slave is a violation of a prohibition, but since he blinded him, he would be free. [The Ya’avetz raises a technical problem: Rabban Gamliel certainly didn’t blind him intentionally since that would be forbidden, rather it was done accidentally (*a proof to this is that he didn’t do it until now*), but the *Gemora* says on 26b that a slave would only go free if he “intended to destroy him.”]

It seems that Rashi would disagree with the Ran (Gittin 20b b’dafei ha’rif) who says that freeing a slave follows the same rules as “*lo sei’chanem*,” that it is only prohibited if done for the purpose of the slave, but not if done for the need of the master. Based on the Ra”n, it should have been permitted for Rabban Gamliel to free his slave since it brings joy to himself and is not for the benefit of the slave. Can we deduce from this Rashi that he disagrees with the Ra”n and maintains that it is forbidden to emancipate a slave even for the benefit of the master?

It seems that Rashi here is not necessarily against the Ra”n (*meaning that even the Ran would hold that Rabban Gamliel wouldn’t be allowed to free his slave for the purpose of giving him joy*). The joy that Rabban Gamliel had was not a selfish joy; rather it is because he loved Tavi so much that he wanted to set him free for his own sake. Even the Ra”n

would agree that if the only benefit to the master is that he is happy to provide benefit to the slave, that would not qualify as a selfish benefit to permit the freeing of a slave.

The Cherem of the Brisker Beis Din

Based on the verse, “Do not extend your hand with the wicked to be a venal witness” (Shemos 23:1), the Gemora determines that a rasha is disqualified from testifying. For these purposes a rasha is considered someone who intentionally transgressed a Torah law that carries a punishment of lashings or worse. If one violates a lesser Torah prohibition or a rabbinical prohibition, rabbinically he is barred from serving as a witness (C.M. 34:1). According to the Shulchan Aruch (ibid. 5), these transgressions even include a cherem [excommunication] decreed by the community.

Indeed, the Ramban (Vayikra 27:29) and other Rishonim (Rashba, cited in Responsa HaRivash §266) write that the source of the prohibition to transgress a cherem is from the Torah, and transgressing a cherem is like transgressing a shavu’a [oath] (Kuntros Mishpat HaCherem of the Ramban). Some opinions, however, maintain that the prohibition against violating a cherem is only rabbinical (Responsa HaRivash §171).

A cherem issued by the beis din of Brisk led the Remo to issue an interesting ruling: Someone who transgressed a cherem is unfit to testify only in that particular instance, but is neither considered a rasha nor unfit to testify in other instances.

Many years ago in Brisk, one Jew slandered another during the course of a dispute. The beis din intervened and issued an injunction requiring anyone with information regarding the matter to report to beis din within seven days. Refusal to comply with the order was punishable by cherem. After one week had gone by, a few Jews from the city came to testify, but because they had not stepped forward on time, they were accused of violating the injunction, making them resha'im who are disqualified from testifying in beis din.

However, the Remo (Responsa §44) rules that in this particular case the latecomers would not be disqualified from giving any other testimony—only in this particular case would their testimony be invalid. According to halacha, a person cannot make himself into a rasha. If he declares that he has sinned or done anything else that would render him a rasha, the beis din cannot accept his testimony. If the dayanim were to believe the latecomers, it would be as if they were testifying that they are resha'im for not obeying the beis din's order to report within a week. Instead the beis din assumes that the witnesses were unaware of the announcement. Thus they are not believed regarding this particular case, but remain kosher witnesses for any other purposes.

A chevra kadisha that did burials on Yom Tov: Even if someone commits a prohibited act intentionally he is not considered a rasha if he is an am ha'aretz [an unlearned person] who mistakenly thinks he is doing a mitzvah. This ruling also applies to members of a chevra kadisha [burial society] who were warned not to bury people on Yom Tov and a cherem was even placed upon them when they disregarded the warning. Nevertheless they were not disqualified from testifying if they perform burials again on Yom Tov (C.M. 34:4). Due to their ignorance the members of the chevra kedusha were convinced that they were performing a great mitzvah, and the cherem imposed by the beis din was only intended to atone for them because they were forced to desecrate Yom Tov.

DAILY MASHAL

A Tzfas fiddler on the streets of Damascus: The Mabit (Responsa III §149, s.v. teshuvah nireh) writes about an ignorant Jew from Tzfas who stayed for Yom Tov in Damascus, Syria. On the second day of Yom Tom, in a great state of simchah, he played his fiddle to bring joy to passersby. Some wanted to excommunicate him for desecrating Yom Tov Sheini, but the Mabit told them that since he sinned unintentionally, there was no reason to be stringent and excommunicate him.